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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,676	08/29/2003	William G.F. Kelly	CHI-0869-CIP	9313
27777	7590	09/25/2009		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
COLE, ELIZABETH M				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
09/25/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/651,676

**Applicant(s)**

KELLY ET AL.

**Examiner**

Elizabeth M. Cole

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,3,7,8 and 18-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,7,8 and 18-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 3, 7, 8, 18-19, 21-22, 24-33, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Merz et al, U.S. Patent No. 4,995,930. Merz discloses a composite film suitable for use as a topsheet comprising a first fluid permeable nonwoven layer and a second layer. The second layer comprises apertures. The second layer further comprises macrofeatures which extend from the second layer towards the first layer, (see element 11 in figure 3). The first layer is in substantial surface to surface contact with the second layer at regions outside the macrofeatures, (an also at other regions of the surface but the claims do not recite that contact is only at the outside), see figure 3. The apertures are in the area of the macrofeatures and the aperture sidewalls are within the area of one of more macrofeatures, see figure 3, wherein the aperture sidewalls of the layer 2 are between the macrofeatures 11. With regard to the limitations regarding the first or second layers contacting a body, it is noted that "body" is not defined in the claims and therefore any other layer or the body of a wearer or user of the absorbent structure is construed as meeting this limitation. With regard to the limitation as to where the apertures originate in the second layer, since the aperture would be definition extend all the way through the layer in order for it to be an aperture, the limitations regarding where the apertures originate are seen as process limitations. Since Merz teaches apertures, Merz meets this limitation. With regard to the limitation that there

are first and second macrofeatures that produce a plurality of visual design elements, since there are more than one macrofeature in the topsheet of Merz, the macrofeatures necessarily meet this limitation, since the macrofeatures would be visually apparent and would necessarily form some sort of design, whether regular or random, pleasing or not. The pattern is not further defined in the claim. Any visually apparent element can be considered to be a design.

3. Looking at the figures of Merz, especially figure 3, it can be seen that the first layer corresponds to layer 70, the second layer corresponds to layer 2, the macrofeatures correspond to elements 11, that the film 2 has a first surface which comprises the macrofeatures 11 and which is directed towards the first layer, (layer 70 of Merz), that it has a second surface opposite the first surface comprising a plurality of apertures with sidewalls which terminate in and define a second plane, (the top surface of layer 2 in figure 3), that the caliper or thickness of layer 2 is defined by said first and second planes, (i.e., the thickness between the elements 11 and the top of layer 2) and that the first layer is in substantial surface to surface contact with the second layer in said lower regions of said first surface located outside of said macrofeatures, (since layers 70 and 2 are shown to be in contact substantially across their surfaces). With regard to claim 19, the lower regions of the second layer define a third plane which is between the first and second planes, (for example the surface of the layer 2 from which the elements 11 project).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20, 23 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merz et al, U.S. patent No 4,995,930 as applied to claims above, and further in view of Takai, et al, U.S. Patent No. 5,656,232. Merz discloses a composite sheet as set forth above. differs from the claimed invention because Merz does not disclose that the second layer can be a nonwoven and does not disclose that the macrofeatures are apertured. Takai teaches that in forming composite topsheets having a plurality of macrofeatures that both layers can be nonwoven fabrics. See col. 4, lines 40-67, col. 5, lines 1-6. A nonwoven fabric which is permeable and used as a topsheet for an absorbent article will necessarily comprise apertures or openings, including in the macrofeatures. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the structure of Merz so that both layers comprised a nonwoven fibrous material as taught by Takai, since Takai teaches that either films or nonwoven layers can be employed as such layers, (see col. 4, lines 4-10).

6. Applicant's arguments have been fully considered but are moot in view of the new grounds of rejection.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Rena Dye may be reached at (571) 272-3186.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794

e.m.c